

IN THE UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In Re: COOK MEDICAL, INC., IVC FILTERS
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

Case No: 1:20-cv-00225
MDL No. 2570

This Documents Relates to Plaintiff(s):
RICHARD W. GARCIA

Civil Case No. 1:20-cv-00225

MOTION TO SUBSTITUTE PARTY PLAINTIFF AND FOR LEAVE TO FILE
AMENDED SHORT FORM COMPLAINT

COMES NOW, Plaintiff Richard W. Garcia and files this motion to substitute his surviving spouse, Elva S. Garcia, as the proper plaintiff pursuant to Federal Rule of Civil Procedure 25(a)(1). In support therefore, Plaintiff respectfully shows the court the following:

1. Plaintiff Richard W. Garcia filed the present action in the United States District Court of the Southern District of Indiana on January 21, 2020.
2. Plaintiff Richard W. Garcia died on or about December 31, 2020.
3. On September 26, 2024, Plaintiff filed a suggestion of death pursuant to Federal Rule of Civil Procedure 25(a). See Doc. No. 26055. Plaintiff's counsel recently learned of the death of Richard W. Garcia after contacting his spouse.
4. Elva S. Garcia, surviving spouse of Richard W. Garcia, is the proper party plaintiff to substitute for Plaintiff-decedent Richard W. Garcia and has proper capacity to proceed forward with the surviving products liability lawsuit on Plaintiff-decedent's behalf, pursuant to Fed. R. Civ. P. 25(a)(1), stating, "[i]f a party dies, and the claim is not extinguished, the court may order substitution of the proper

party. A motion for substitution may be made by any party or by the decedent's successor or representative."

5. Plaintiff thus moves to substitute Elva S. Garcia, as the personal representative of the Estate of Richard W. Garcia, deceased, as Plaintiff in the present action.
6. Plaintiff also moves to amend the Complaint, as well as the caption of the Complaint, to correct the proper Plaintiffs (specifically Elva S. Garcia, as personal representatives of the Estate of Richard W. Garcia, deceased) and to update and include information, allegations, and actions within the Complaint to reflect that Plaintiff Richard W. Garcia is now deceased.
7. A proposed First Amended Short Form Complaint is attached hereto as Exhibit A.
8. Pursuant to Federal Rules of Civil Procedure 15(a)(2), a party may amend its pleading only with the opposing party's written consent or the Court's leave. The Court should freely give leave when justice so requires.

WHEREFORE, counsel for Plaintiff requests this Court for the following relief (1) the Court substitute Elva S. Garcia as the personal representative of the Estate of Richard W. Garcia, deceased, as Party Plaintiff for Richard W. Garcia; (2) the Court grant leave to file the attached First Amended Short Form Complaint; Case 1:20-cv-00225 and (3) the Court deem the attached First Amended Short Form Complaint filed instanter. A proposed Order is attached hereto as Exhibit B.

Date: September 26, 2024

Johnson Law Group

/s/Basil Adham

Basil E. Adham, TX Bar No. 2408172
2925 Richmond Avenue, Suite 1700

Houston, TX 77098

Telephone: (713) 626-9336

Fax: (713) 583-9460

Email: IVC@johnsonlawgroup.com

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2024, a copy of the foregoing was served electronically and notice of the service of this document will be sent to all parties by operation of the Court's electronic filing system to CM/ECF participants registered to receive service in this matter. Parties may access this filing through the Court's system.

/s/Basil Adham